

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Division of Law, Fifth Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

FILED
BOARD OF OPTOMETRISTS

DEC 07 2007

By: Alan R. Niedz
Deputy Attorney General
Tel. (973) 648-4742

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF OPTOMETRISTS

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	
	:	
	:	Administrative Action
S. MOSHE ROTH, O.D.	:	
LICENSE NO. 27TO00041300	:	
27OA00378500	:	FINAL CONSENT ORDER
4635	:	
	:	
TO PRACTICE OPTOMETRY	:	
IN THE STATE OF NEW JERSEY	:	
(OAL DOCKET NO. BDSOP 02368-2007S)	:	

This matter was opened to the New Jersey State Board of Optometrists (the "Board") upon the filing of an Administrative Complaint by the Attorney General of New Jersey against Respondent, S. Moshe Roth, O.D. The Complaint alleged that, sometime prior to June 14, 2001, B.M., an infant patient, had been diagnosed with a rare condition known as Peter's Anomaly. The Complaint further alleged that B.M. was being treated by two

ophthalmologists, Dr. Gerald Zaidman, M.D., a corneal specialist, and Dr. Robert Wagner, a pediatric ophthalmologist. The Complaint further alleged that Dr. Zaidman performed corneal transplant surgery on B.M.'s right eye on June 14, 2001 and that Dr. Wagner cared for and treated B.M.'s visual needs post-operatively. The Complaint further alleged that both ophthalmologists determined that B.M. required contact lenses, rather than eyeglasses, to prevent severe amblyopia. The Complaint further alleged that, on or about March 7, 2002, at the request of B.M.'s parents, Respondent agreed to fit B.M. with contact lens.

The Complaint further alleged that during Respondent's course of treatment, he negligently failed to remove a diagnostic lens from B.M.'s right eye for a four day period. The Complaint also alleged that Respondent ignored the ophthalmologists' specific instruction to patch, or cover, B.M.'s left eye and that Respondent incorrectly instructed B.M.'s parents to patch B.M.'s right eye.

The Complaint further alleged that, on August 22, 2002, Dr. Zaidman performed cataract extraction surgery on B.M., which required that B.M. be fitted with an aphakic contact lens. The Complaint further alleged that, on September 23, 2002, Dr.

Wagner issued a prescription for a +15 lens, but that Respondent fitted the patient with -6 power lens and that, consequently, B.M.'s right eye consistently showed poor reflex and significant over-refraction. The Complaint further alleged that Respondent failed to conduct any testing to determine whether the contact lens he had fitted was, in fact, the cause of his patient's poor reflex. The Complaint further alleged that, upon seeking the care of another optometrist who fitted B.M. with a contact lens of the correct prescription, B.M.'s eye produced a normal reflex.

The Complaint alleged that the above-cited conduct by Respondent constitutes numerous violations of N.J.S.A. 45:1-21(c), (d), (e) and (h). Respondent, through counsel, James A. Schragger, Esq., filed an Answer with the Board on or about January 11, 2006.

To avoid further proceedings in this case, Respondent consents and agrees to each and every term of this Final Consent Order. The Board hereby finds that Respondent's conduct did, in fact, violate N.J.S.A. 45:1-21(c), (d), (e) and (h). The Board, however, has determined that the instant disposition is adequate to protect the public. For such reasons, and for other good cause shown,

IT IS, on this 7th day of ~~November~~ ^{December}, 2007, ORDERED AND AGREED that:

1. Respondent shall be, and he hereby is, publicly reprimanded for his conduct in connection with the care and treatment of patient, B.M.

2. Respondent shall, at his sole cost and expense, successfully complete two courses, one in contact lens prescribing and one in the management of amblyopic patients, within six (6) months of this Order. Each such course shall consist of at least three hours of course presentation. Such courses shall be in addition to, not in substitution of, Respondent's required continuing education. Before enrolling in such courses, Respondent shall first apply in writing for, and receive, approval from the Board, which approval shall be solely at the Board's discretion, but which shall not be unreasonably withheld. Upon successful completion of each course, Respondent shall supply the Board with written confirmation from the course sponsor that he fully attended and successfully completed each course.

3. Respondent shall reimburse the parents of his patient, B.M., the amount of \$1,750.00. A certified check, or money order, made payable directly to these individuals, whose names

are to be made available by the Board, shall be submitted by Respondent upon his execution of this Order to the Board at: Board of Optometrists, 124 Halsey Street, 6th Floor, Newark, New Jersey 07102, Attn: Lisa Petrowski.

4. Respondent is hereby assessed civil penalties totaling \$20,000. The payment of such penalty shall be submitted by Respondent in accordance with Paragraph 6 of this Order.

5. In accordance with Paragraph 6 of this Order, Respondent shall pay \$11,500 for the Board's costs in this matter, including but not limited to, costs of investigation, expert witness fees and costs, attorney's fees and costs, and transcript costs, as are authorized under N.J.S.A. 45:1-25(d).

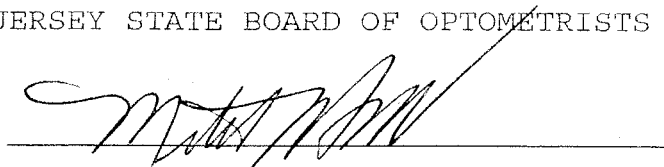
6. Respondent shall pay the amounts set forth in Paragraphs 4 and 5 of this Order, which amounts total \$31,500, plus interest at the judgment rate as prescribed under R. 4:42-11, in sixteen (16) equal payments. Each such payment equals \$1,968.75, exclusive of the applicable interest payment then due. The first such payment shall be due on January 1, 2008, and each subsequent payment shall be due on the first day of each succeeding month. The payment of such amounts shall be submitted by Respondent by certified check or money order made payable to the State of New Jersey, to: Board of Optometrists,

124 Halsey Street, 6th Floor, Newark, New Jersey, 07102, Attn: Lisa Petrowski. The Board may, in its sole discretion, file a Certificate of Debt for the amounts due under this Order, should Respondent fail to make timely payments as required by this Order, such Certificate to be canceled upon payment in full of the amounts due. If Respondent fails to make any timely payment required under this paragraph, the Board may, in its sole discretion, accelerate the entire amount then outstanding and demand immediate payment of such amount. The failure by the Board to so accelerate the amount due or to so demand payment shall not constitute a waiver or release of any claim, remedy or right that the Board may have under this paragraph.

7. This Order shall be a full, complete and final resolution of the matter now pending before the Office of Administrative Law entitled In re S. Moshe Roth, O.D. (OAL DOCKET NO. BDSOP 02368-2007S) and the parties hereby consent to the Office of Administrative Law closing the matter and returning it to the Board. The Board shall retain jurisdiction to enforce the terms of this Order.

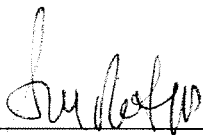
NEW JERSEY STATE BOARD OF OPTOMETRISTS

By:



Board President

I have read this Order. I understand the terms and conditions of this Order and agree to be bound by them. I hereby consent to the entry of this Order.



S. Moshe Roth, O.D.

Dated: **November 16, 2007**

I have counseled Respondent regarding the form, content and entry of this Order and I consent to its entry.



James A. Schragger, Esq.

Dated: **November 19, 2007**